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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The report provides an overview of the findings of a global study conducted from 2013 to 2016 on the national legislation on private military and security companies in 60 States from all the regions of the world. The findings focus on existing regulatory gaps, commonalities and good practices and can provide guidance to Member States and various stakeholders on regulation. Existing regulatory gaps are real indicators that more robust measures are required for stronger protection against human rights violations by private military and security companies. The Working Group reiterates the need for a comprehensive, legally binding instrument to ensure adequate human rights protection within, and of, the industry.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

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I. Introduction

1. The present report provides an overview of the findings of the Working Group's global study on national legislation covering private military and security companies in 60 States from five regions worldwide.[1]

2. Between 2013 and 2016, annual reports to the Human Rights Council covered the national legislation of thirteen anglophone African States,[2] eight francophone African States[3] and eight Asian States. The 2015 report[4] covered the laws and regulations of eight countries in Central America and the Caribbean,[5] eight countries in South America[6] and four countries in Europe.[7] The 2016 report[8] covered six countries of the Commonwealth of Independent States,[9] four countries in the Asia and Pacific region,[10] and the United States of America.[11] Additional background and research documents relating to the regional studies undertaken in the past four years are available on the Working Group's website[12] and can provide more comprehensive and in-depth coverage of the national legislation referred to in the present report.

3. The global study was conducted to provide analysis of national legislation in order to assess existing gaps, trends and good practices, which could help in developing guidance on regulation within and of the industry. The methodology for the study included a questionnaire sent to States[13] in 2012. Over 30 States responded. Additional research was conducted on States' laws and regulations relating to private military and security companies in all of the United Nations regional groups. The Working Group then analysed the available laws and regulations, on the basis of the following criteria: (a) references to conventions on mercenaries; (b) scope of application; (c) rules on licensing, authorization and registration; (d) regulations on selection and training; (e) prohibited and permitted activities of private military and security companies; (f) rules on acquisition of weapons by private military and security companies; (g) use of force and firearms; and (h) accountability.

4. The Working Group would like to thank the Member States and all stakeholders that contributed to the global study in the past four years.

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[1] The report is non-exhaustive, and a more comprehensive coverage of the main issues can be found in the Working Group's annual reports to the Human Rights Council from 2013 to 2016.

[2] See A/HRC/24/45, in regard to Botswana, the Gambia, Ghana, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda and Zimbabwe.

[3] See A/HRC/27/50, in regard to Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of the Congo, Mali, Morocco, Senegal and Tunisia, and to China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates.

[4] A/HRC/30/34.

[5] Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama.

[6] Argentina, the Plurinational State of Bolivia, Brazil, Chile, Colombia, Ecuador, Peru and Uruguay. (For Argentina, which has a federal system under which regulations are implemented by each province, the regulations of the Province of Buenos Aires were analysed.)

[7] France, Hungary, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

[8] A/HRC/33/43.

[9] Azerbaijan, Kazakhstan, Kyrgyzstan, the Republic of Moldova, Tajikistan and Uzbekistan.

[10] Australia, New Zealand, Nauru and Papua New Guinea.

[11] Australia and New Zealand, along with the United States of America, are members of the Western European and Others Group at the United Nations, one of the geopolitical regional groups into which Member States have unofficially divided themselves.

[12] See www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/NationalLegislationStudies.aspx.

[13] With regard to the methodology for the Latin American States, the selection was focused on Spanish-speaking countries.

II. Good practices

5. This section provides a summary of some of the good practices identified in various States.

6. Three of the six countries reviewed from the Commonwealth of Independent States have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries[14] and all six have enacted criminal offences relating to mercenary activities.[15] The laws of both Peru and South Africa also specifically prohibit mercenary activities.[16]

7. Regarding the scope of legislation, States vary on the definitions given to military and security services. Most States informed the Working Group that their laws only covered private security companies and not private military companies. South Africa has good model legislation that broadly defines a security service,[17] prohibits the export of military and security services,[18] and applies extraterritorially.[19] Any act that constitutes an offence under the applicable law and is committed outside South Africa is considered to have been committed in the country.[20]

8. The Swiss legislation is also progressive in relation to extraterritorial application, as it covers the activities of local private security companies,[21] and services provided by companies hired locally or abroad by the Government and by private security companies abroad.[22]

9. The legislation of the United States of America and of Australia is quite elaborate on extraterritoriality as well. The Military Extraterritorial Jurisdiction Act, of the United States, extends United States federal criminal jurisdiction to certain defence contractor personnel or contractors hired by other agencies who support the Department of Defense as regards criminal offences committed outside United States territory.[23] If a contractor in a designated operational area or supporting a diplomatic or consular mission is involved in conduct outside the United States that would constitute an offence punishable by imprisonment for more than one year, he or she may be potentially subject to the criminal jurisdiction of the United States of America.[24] In Australia, the contractors of the Department of Defence can be considered as "defence civilians", and criminal acts abroad are covered by the applicable criminal law and prosecution can take place in Australian courts.[25] As a result of the amendment of the Crimes (Overseas) Act 1964, criminal acts by private security or military contractors hired by government agencies other than the Department of Defence are covered by Australian criminal law.[26] The Crimes (Overseas) Act covers bodies corporate as much as individuals, which means that an Australian private

[14] Of 4 December 1989. A total of six countries from the Commonwealth of Independent States were reviewed.

[15] Art. 114 of the Criminal Code of Azerbaijan, arts. 170 and 267 of the Criminal Code of Kazakhstan, arts. 229 and 375 of the Criminal Code of Kyrgyzstan, arts. 141, 151 and 152 of the Criminal Code of the Republic of Moldova, arts. 185, 195, 196, 401, 403 and 405 of the Criminal Code of Tajikistan, and arts. 97, 104, 105 (chap. 1 of sect. 1) and 154 of the Criminal Code of Uzbekistan.

[16] With regard to South Africa, see Act No. 27 of 2006 (Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act).

[17] Sect. 1 (1) of the Private Security Industry Regulation Act, 2001.

[18] See the Private Security Industry Regulation Act No. 56 of 2001, the Regulation of Foreign Military Assistance Act (No. 15 of 1998) and the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act (No. 27 of 2006).

[19] See the Private Security Industry Regulation Act, art. 39 (1).

[20] Ibid.

[21] Concordat on the Services of Private Security Companies of 2010.

[22] Decree on the Hiring of Private Security Companies of 2007.

[23] Military Extraterritorial Jurisdiction Act (18 U.S. Code, sects. 3261-3267).

[24] Military Extraterritorial Jurisdiction Act (18 U.S. Code, sects. 3261 et seq.), and 48 Code of Federal Regulations, chap. 1 (10-1-11 edition), 52.225-19, p. 210.

[25] Defence Force Discipline Act 1982, sects. 9 and 61.

[26] See sect. 3.

military company or private security company carrying out activities in a foreign country could be subjected to criminal prosecution as well.

10. Various States in Latin America[27] have specific registration systems at the national level for private security companies. Cameroon, Pakistan, the Philippines and Sri Lanka also have similar regulatory provisions. The Province of Buenos Aires also requires the supervisory authority to keep a registry of the persons authorized to provide private security services, and also of persons who have been rejected for infractions.[28]

11. With regard to the licensing and selection process, four States in Asia (China, the Philippines, Singapore and the United Arab Emirates) require licensing for a company providing private security services, and for individual security personnel or employees.[29] The requirement for personnel of private security companies to obtain licences can be an important vetting mechanism to ensure that qualified persons are employed, but also that persons with past convictions relating to human rights abuses are excluded. As for the relationship between the licensing and selection process and human rights standards, the Working Group notes that according to the Swiss legislation, "competent authorities" can decide to prohibit, wholly or partially, certain activities because they may be contrary to the aims of the law, including services that may be used to commit human rights violations. Another good example is the legislation of the Province of Buenos Aires, where private security companies are prohibited from having partners that have benefited from amnesties and been indicted for human rights violations, and a certificate issued by the competent human rights authorities is required as proof.[30] In Guatemala, candidates who have served in the army, the national civilian police, the government intelligence services or another private security company must prove that if they were dismissed it was not because they committed a crime or a human rights violation.

12. Good examples of references to international human rights and humanitarian law standards in the training of personnel of private security companies are found in the Swiss legislation, which requires companies to train their personnel in applicable national and international law, including on fundamental rights. Reference to "human rights" appears several times in Brazilian legislation, in which it is stated that training must cover preservation of the physical integrity of persons confronted with the use of force in their work, in accordance with the principles of human rights advocated by the United Nations.[31] El Salvador, Guatemala,[32] Mexico[33] and Colombia[34] require a private security company to offer training on human rights to its personnel. Colombia refers to a special training programme involving international humanitarian law.[35]

13. In the United States, Congress established a legislative framework in the National Defense Authorization Act requiring the Department of Defense, in coordination with the Department of State, to be in charge of the licensing of private military and security companies and to prescribe regulations on the selection, training, equipping and conduct of

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[27] Brazil, Cameroon, Chile, Colombia, Ecuador and Peru. Also Pakistan, the Philippines and Sri Lanka, and the Province of Buenos Aires.

[28] Act. No. 12.297.

[29] Regarding China, see Order of the State Council No. 564, Regulation on the Administration of Security and Guarding Services, of 2009. Regarding the Philippines, see the Private Security Agency Law, 1969 (Act No. 5487), as amended by Presidential Decree No. 11, 1972, and, subsequently, by Presidential Decrees No. 100, of 1973, and No. 1919, of 1984. Regarding Singapore, see the Private Security Industry Act, 2007 (Act No. 38). Regarding the United Arab Emirates, see Federal Decree No. 37, of 2006, concerning Private Security Companies (art. 11, which provides that the company may not contract a security employee until it has obtained the approval of the competent authorities and fulfilled the restrictions and conditions specified in the law's executive regulations).

[30] Act No. 12.297, art. 8 (2); and Acts No. 23.492 and No. 23.521.

[31] Ordinance No. 3233, annexes; Act. No. 7102/1983, art. 16; and Ordinance No. 3233/2012, art. 155 (VI).

[32] Act No. 51/2010, art. 51 (c).

[33] Art. 25 (VIII), federal law of 2006.

[34] Act No. 365/1994, art. 74.

[35] Act. No. 2974/1997, art. 21.

personnel performing private security functions in an area of combat operations.[36] The Department of Defense also supported the development of a business and management standard,[37] now an international standard (ISO 18788), for private security companies, known as PSC-1, which includes training and accountability measures. Companies must implement the standard in order to compete for contracts.[38] Australia and New Zealand have also recognized and supported ISO 18788.

14. With regard to prohibited activities, it is stated in the laws of Guatemala that the private security industry cannot assume functions that are the tasks of the Government.[39] The United States limits the outsourcing of "inherently governmental functions" to private military and security companies. Federal law[40] and federal policy[41] define the scope of those functions which only governmental personnel, and not contractor employees, may perform. According to both the federal law and the policy regulation, "contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention",[42] and "gathering information for or providing advice, opinions, recommendations or ideas to Federal Government officials"[43] are not to be considered as inherently governmental functions.

15. Swiss law clearly prohibits direct participation in hostilities in an armed conflict abroad — including through the hiring, training and provision of security personnel for direct participation in hostilities abroad or the establishment, management or control of a company in Switzerland involved in such activities[44] — and provides specific sanctions, including fines and imprisonment, for violations of that provision. The laws of Costa Rica and Mexico include human rights violations among the prohibited activities.[45] It is stated in Costa Rican regulations that under no circumstances may simple obedience be invoked as justification for or to claim impunity for torture or cruel, degrading or inhuman punishment.[46]

16. Regarding the involvement of law enforcement officers in the activities of private military and security companies, some States in South America prohibit active members of the police and armed forces (public officials too, in the Plurinational State of Bolivia), as well as (with the exception of Chile) former members of the police and the armed forces who have committed infractions or crimes, from undertaking private security activities. Australia and Nauru have similar laws, and the majority of francophone African States' laws discourage private security companies from hiring former members of the military forces or the police as managers or employees. Some European countries, such as France[47]

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[36] Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111-383; National Defense Authorization Act for Fiscal Year 2010, Public Law 111-84; Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417; National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181. However, it needs to be noted that the National Defense Authorization Act is not a permanent piece of legislation, in that it is passed on an annual basis and can therefore change from year to year.

[37] American National Standards Institute, *Management System for Quality of Private Security Company Operations: Requirements with Guidance*, ANSI/ASIS PSC.1-2012, available from www.acq.osd.mil/log/ps/.psc.html/7_Management_System_for_Quality.pdf (now ISO 18788).

[38] Office of the Assistant Secretary of Defense for Logistics and Materiel Readiness, "Private security companies", available from www.acq.osd.mil/log/ps/psc.html.

[39] Act No. 51/2010, art. 59.

[40] Federal Activities Inventory Reform Act of 1998, Public Law 105-270, p. 112, Stat. 2382, and Federal Acquisition Regulation of 2005.

[41] Office of Management and Budget, circular A-76, and Office of Federal Procurement Policy, policy letter 11-01.

[42] Federal Acquisition Regulation, sect. (d) (19); and Office of Federal Procurement Policy, policy letter 11-01, appendix B, sect. 9.

[43] Office of Federal Procurement Policy policy letter 11-01, part 3, definitions (b) (1).

[44] Federal Act on Private Security Services Provided Abroad, of 2013, art. 8.

[45] The Costa Rican regulation regarding private security services, No. 8395/2003, and regulation No. 33128-SP/2006; and the Mexican federal law on private security, of 2006, art. 32 (X).

[46] Regulation No. 33128, art. 29 (3).

[47] Law No. 83-629, arts. 10, 11-3 and 11-7.

and Hungary,[48] prohibit former police or military personnel, those in the national security services performing official duties, and individuals who are not such staff but contribute to related official duties, from participating in private military and security companies' activities.

17. On the use of force and firearms, the reviewed States typically follow two approaches. Some choose to allow private security company personnel to carry and use firearms under certain conditions,[49] and others opt for prohibiting the use of firearms and provide a list of exception clauses with guarantees.[50] The United States generally prohibits personnel of private military and security companies from using force, but lists exceptions and conditions under which the use of force is allowed. Furthermore, "contractor personnel are only authorized to use deadly force in self-defence"[51] and "when such force reasonably appears necessary to execute their security mission to protect assets/persons".[52] Other good examples are from Kyrgyzstan and the Republic of Moldova, where the laws specify circumstances under which the use of firearms or special devices is justified: firearms may be used in defence against an impending attack that threatens human life or health, against a group attack or armed assault against protected property, to restrain individuals showing armed resistance, or to fire a warning shot in the air. The law of the Republic of Moldova includes further provisions: the security personnel or detective must issue a prior warning regarding his or her intention to use force.

18. Regarding training on the rules of engagement and the use of force, some States, including China, the Philippines and Uganda, govern the circumstances under which private security service providers may use firearms. The Democratic Republic of the Congo and Azerbaijan provide rules on the use of high-calibre weapons or special devices that usually involve lethal force. Personnel of private security companies are prohibited from patrolling and carrying arms that are normally reserved for the military and the police, in the Democratic Republic of the Congo. The United States law specifies that contractor personnel can only be armed for individual self-defence based on national and international law[53] and if "weapons familiarization, qualification, and briefings regarding the rules for the use of force have been provided".[54]

III. Gaps in national legislation

19. Notwithstanding the good practices mentioned, the global study showed that regulatory gaps were prominent.

A. Scope of application

20. The global study shows that with the exception of the United Kingdom of Great Britain and Northern Ireland (which adopts a self-regulatory approach within the framework of the British Association of Private Security Companies), and Kenya and

[48] Act CXXXIII of 2005, art. 2.

[49] As the Working Group saw from the global analysis, most of the States reviewed from the Asian and Latin American regions followed this path.

[50] For example, Burkina Faso, Côte d'Ivoire, the Democratic Republic of the Congo, the Gambia, Hungary, Kyrgyzstan, Morocco, Nigeria, the Republic of Moldova, Switzerland and the United States of America.

[51] 48 Code of Federal Regulations, chap. 2 (10-1-11 edition), (b) General, (3) (i); and Federal Acquisition Regulation, 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, General, (ii) (B) (3) (i).

[52] 48 Code of Federal Regulations, chap. 2 (10-1-11 edition), (b) General, (3) (ii); and Federal Acquisition Regulation, 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, General, (ii) (B) (3) (ii).

[53] Department of Defense instruction No. 3020.41, 20 December 2011, part 4 (c) 2 (a).

[54] Ibid., part 4 (c) 2 (b).

Swaziland (which have no legislation that addresses the private security sector),[55] all countries analysed covered mainly the activities of private security companies, with only very few or no provisions at all on private military companies and their services. However, the present report commonly refers to the term "private military and security companies" in order to cover the various types of companies in the diverse countries that have been reviewed in the global study.

21. The Working Group notes that private security companies also carry out functions that can be deemed "military" and that this issue needs to be addressed or assessed further. It is therefore important to assess the types of services offered by private security companies.

22. Regulated activities of private security companies include, in general, the protection and patrolling of sites and the protection and guarding of persons,[56] but this list is often extended with further activities. In Europe, Central America and anglophone Africa, the services of private security companies cover mostly surveillance, the transportation, protection and shipment of cash, jewels, precious metals and other valuables, and the conducting of investigations.[57] The United Kingdom law covers services provided by security consultants, and in Switzerland, activities related to traffic management, assistance to public authorities, the transport of detainees, and private detective services are also regulated. In Central America, private security companies also engage in the maintenance of order at public events, bodyguard services, transportation, the manufacture and marketing of security equipment and systems, and the provision of security advice.[58] In South American national legislation the range of activities of private security companies is more detailed and covers services including obtaining evidence for civil lawsuits.[59] Zimbabwean law covers activities of private investigators, which is also the case for the law of the Philippines and of Singapore. China and Sri Lanka are unique in covering services to the public sector. In the United Arab Emirates law, government bodies are included in the definition of private security companies, suggesting that a government body can be used to offer private security services.

B. Licensing, authorization and registration of private military and security companies

23. With regard to the bodies in charge of licensing and regulation of private military and security companies, the analysis shows that no specific bodies exist on private military and security companies. These functions are performed by the units or departments within ministries responsible for internal security[60] or justice[61] or defence,[62] or by a specialized intergovernmental body[63] or a central government[64] or local government[65] authority.

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[55] There is currently no law that specifically deals with the private security industry in Kenya, whereas the Swazi legislation does not regulate the industry, the enterprises or companies, or even the security officers, but only the "wages" associated with those involved in the security industry, through the Regulation of Wages (Security Services Industry) Order, 2011.

[56] See Burkina Faso, Law No. 032/2003, art. 23, and Decree No. 2009-343, art. 2; Côte d'Ivoire, Decree No. 2005-73, art. 2, para. 1; Democratic Republic of the Congo, Ministerial Decree No. 98/008, art. 1; Morocco, Law No. 27-06, art. 1; Senegal, Decree No. 2003-447; and Tunisia, Decree No. 2002-81, art. 1 (a).

[57] France has Law No. 83-629; Switzerland has the Concordat on security companies, of 1996, and the decree on the hiring of private security companies, of 2007; Hungary has Act No. CXXXIII, of 2005; and the United Kingdom has the Private Security Industry Act, of 2001.

[58] See A/HRC/30/34, para. 40.

[59] In the Province of Buenos Aires, Argentina, Act No. 12.297/1999 covers the transportation, guarding and protection of any legal transfer, except the transport of funds. It also covers private services, such as obtaining evidence for civil law suits.

[60] For example, in the reviewed States in Central and South America (with the exception of Colombia), in some countries of anglophone Africa (such as the Gambia, Nigeria and Zimbabwe) and of francophone Africa (such as Burkina Faso, Côte d'Ivoire, the Democratic Republic of the Congo,

24. As for the registration of private security companies, apart from a few States' legislation that provides the possibility of a specific register,[66] States require either voluntary self-registration[67] or registration in the general trade and commerce register.[68]

25. As a precondition for obtaining a licence, States have a variety of requirements, including "suitability" or "good conduct/good behaviour", "moral standards", qualifications and training, and a clean criminal record. In francophone African countries, for example, the requirements of "good behaviour"[69] and "moral standards"[70] seem to be considered the most relevant, whereas in all reviewed States in Asia, it is equally important that private security company employees possess certain training qualifications and have clean criminal records. In Latin America, States put specific emphasis on the criteria of securely storing firearms used by private security company personnel, and they generally require additional information on the company's installations, equipment and firearms. Another important requirement in Central American States is that the owners of private security companies must be nationals;[71] the relevant laws provide only a very limited margin of operations for foreign companies.[72] This element is similarly important in some of the countries of the Commonwealth of Independent States, which stipulate that foreign security organizations are not allowed to conduct their operations within their territories.[73] In addition, in the legislation of South American States, the "suitability" and the "good moral character" of private security company employees are typically required to be certified by the police or by court records, and contracting third-party liability insurance[74] or insurance for employees[75] is also a common requirement for obtaining a permit.

C. Selection and training of personnel of private military and security companies

26. Among the minimum selection criteria for personnel, States often list a variety of requirements, including the applicant's clean criminal record,[76] fitness for the job,[77]

Mali and Tunisia), as well as in Asia (Malaysia and Singapore) and in Europe (France and the United Kingdom).

61 For example, in New Zealand.

62 For example, in Botswana, and in some cases in Latin America.

63 For example, in Cameroon, Colombia, Kenya, Lesotho, Namibia, Nauru, Papua New Guinea, Senegal and Sierra Leone.

64 For example, in China, India, Pakistan, the Philippines, Sri Lanka and the United Kingdom.

65 For example, in most of the States of the Asian region, or in federal States such as China, India and Pakistan. Moroccan law provides for a "competent administrative authority" in charge of reviewing the requests for authorization, but does not specify further responsibilities or the relationship with a supervising or monitoring ministry or other government body.

66 For example, in States of Latin America (Brazil, Chile, Colombia, Ecuador and Peru, and also in the Province of Buenos Aires, in Argentina), and in Cameroon, Pakistan, the Philippines and Sri Lanka.

67 For example, in Morocco and Tunisia.

68 For example, in general in the European States reviewed and in the Asian region.

69 See, for example, the legislation of Tunisia.

70 See, for example, the relevant laws of Burkina Faso and Senegal.

71 See, for example, the laws of Mexico and Panama.

72 See, more particularly, the legislation of Costa Rica and Honduras.

73 See, for example, the legislation of Azerbaijan and Uzbekistan.

74 For example, in the Plurinational State of Bolivia, Colombia and Ecuador.

75 For example, Brazil and Chile.

76 Burkina Faso, Costa Rica, Côte d'Ivoire, El Salvador, Lesotho, Mali, Morocco, Panama, Senegal and Tunisia, and the countries of South America and of the Commonwealth of Independent States, as well in general.

77 For example, in Costa Rica, El Salvador and Guatemala, a psychological and physical examination is required. In Brazil, Chile, Ecuador, Peru and Uruguay, and in the Province of Buenos Aires, a certification of physical and psychological aptitude is required. Kyrgyzstan excludes individuals with incapacity due to physical and mental disabilities, and Azerbaijan requires medical evidence in case of psychiatric disorders. In the Pacific region, the national legislation of Australia and of Papua New Guinea also sets as a requirement the fitness of the applicant.

nationality,[78] age,[79] good moral standards,[80] financial position[81] and education,[82] as well as the applicant's competences and experience.[83] At the same time, selection requirements vary significantly (for example, regarding the criteria relating to the applicant's criminal record, the selection requirements vary in relation to the gravity of the crimes involved).[84] Also, while some laws are very detailed,[85] others have no specific description of the selection process.[86] Furthermore, with only a very few exceptions (such as Guatemala, Switzerland, and the Province of Buenos Aires), the Working Group found no laws containing reference to international human rights and humanitarian law as part of the selection process.

27. As far as training the personnel of private security companies is concerned, overall there is an inconsistent trend. States in general place emphasis on the necessity of providing training to private security company personnel. Some States set adequate training as a prerequisite to the selection of personnel.[87] Other countries arrange such trainings only later, after the selection process, typically through those entities or organizations that are responsible for regulating and/or controlling the private security sector,[88] or through outsourced education centres.[89]

D. Prohibited and permitted activities of private military and security companies

28. Legislation generally permits private security companies to guard and protect persons and property or goods.[90] Mexican federal law even covers security services for obtaining information, including background reports, as well as the installation and sale of armour systems.

29. Many of the laws reviewed also specify that the permitted activities can only be carried out on private properties[91] and that the companies are required to indicate that their activities are private in nature,[92] in order to differentiate themselves from the armed forces and the national police or other public security forces. In the Hungarian legislation, for

[78] Staff of private military and security companies need to be nationals in Honduras, Mexico and Nicaragua and in Cuba they need to be resident in the country. (In Costa Rica and El Salvador personnel of such companies may be foreign residents.) Regarding South America, Brazil, Chile, Colombia and Ecuador require that personnel be a national of the country concerned, while Peru permits guards to have foreign nationality, and the Plurinational State of Bolivia permits foreign advisers and requires an INTERPOL background certificate. In Colombia, partners of private security companies and members of private security cooperatives must be native-born. In Azerbaijan, Azerbaijani citizenship is required for the selection process.

[79] Private military and security company personnel must be adults, according to the national legislation in Latin American countries, as well as in Azerbaijan, Kazakhstan, Kyrgyzstan, Nauru, New Zealand and the Republic of Moldova.

[80] For example, Burkina Faso, Côte d'Ivoire, Mali, New Zealand and Senegal.

[81] For example, in Nauru.

[82] A minimum level of education is required in the States of Central and South America, as well as in New Zealand.

[83] For example, in Australia and Papua New Guinea.

[84] Examples can be found among the francophone African countries reviewed, as well as among the analysed countries of the Commonwealth of Independent States.

[85] For example, in China, Pakistan, the Philippines and Singapore.

[86] In general, in the national legislation in Central America, but also in Tajikistan and Uzbekistan.

[87] For example, South Africa, all reviewed States in francophone Africa, and Australia, Azerbaijan, Kazakhstan, Kyrgyzstan and the Republic of Moldova.

[88] For example, in Malaysia, Namibia, New Zealand, the Philippines, South Africa and the United States of America.

[89] For example, in Azerbaijan, Kazakhstan, Kyrgyzstan, Peru and the Republic of Moldova.

[90] In the region of the Commonwealth of Independent States, the information available to the Working Group was limited to Azerbaijan and Kazakhstan.

[91] For example, such reference is included in the legislation of francophone African countries, as well as Central and South American States.

[92] See more in the laws of France and of the francophone African countries.

example, it is noted that those involved in private security activities have no public authority powers, must wear a uniform, cannot use the titles and insignia of the authorities and cannot prevent the authorities from carrying out their activities.[93] Similarly, the legislation of Central American States provides that to avoid confusion, uniforms, credentials, logos and vehicle colours similar to those used by the police or the armed forces cannot be used.[94]

30. In general, legislation typically prohibits all activities that private security companies are not entitled to carry out according to their licence. In addition, in France, in the States of francophone Africa, and also for example in Uruguay and in the Province of Buenos Aires, private security companies are not allowed to be involved in labour conflicts or in political or religious events, or to gather information on political, religious or trade union opinions. Furthermore, private military and security companies are in general prohibited from carrying out activities reserved for the armed forces and the police. Some States' legislation further specifies this prohibition or provides similar provisions, including that of the Democratic Republic of the Congo, Morocco and Tunisia, as well as that of the Plurinational State of Bolivia, Colombia, Ecuador and Peru. In some of the reviewed countries of the Asian region, private security companies are prohibited from conducting criminal investigations[95] or from exercising specific powers conferred on police, customs, immigration and prison officers.[96] In Central America, the list of prohibited activities is extended to the roles played by the administration or the judiciary[97] and to investigations that are the exclusive competence of the Public Prosecutor's Office or the national police.[98] Guatemalan law is the most detailed and provides that private security cannot assume functions that are the tasks of the Government.[99]

31. The legislation of the United States limits the outsourcing to private military and security companies of "inherently governmental functions" and provides a detailed list of those activities that "are so intimately related to the public interest as to require performance by Federal Government employees".[100] By excluding the "inherently State functions" from the ambit of the activities of private military and security companies, the United States appears to draw the line between permitted and prohibited activities for private military and security companies, with reference to combat and combat-related activities. However, this does not specifically address "high-risk activities", which would include a number of functions even outside of combat. Additionally, there is no clear enforcement mechanism for ensuring that agencies comply with the exclusion of "inherently governmental functions", which is particularly worrying considering the dramatic expansion of the government contractor industry and the massive increase in the role and involvement of contractors in intelligence analysis and targeting decisions.

32. With regard to direct participation of personnel of private military and security companies in hostilities, the study shows that with the exception of Switzerland,[101] States' national legislation does not address this specific question, and in cases where legislation prohibits personnel of private military and security companies from carrying out certain activities of the police and the armed forces, it is not clear whether the related provisions apply only in times of peace or during armed conflicts as well. Regarding the involvement of law enforcement officers in the activities of private military and security companies, the

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93 Act CXXXIII of 2005, art. 2.

94 The laws of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

95 In Malaysia and the United Arab Emirates.

96 In Malaysia and Pakistan.

97 Costa Rica.

98 El Salvador and Mexico.

99 Guatemala.

100 Federal Activities Inventory Reform Act of 1998, sect. 5.2, and Office of Management and Budget circular A-76, Inventory Process B.1.a.

101 United Kingdom law does not define what military or security activity can be outsourced to private companies, but there is an understanding that military activity in situations of armed conflict can be delivered only by military personnel under the command of a commissioned officer. (See A/HRC/22/41, para. 53, and the response of the Government of the United Kingdom to the Working Group's request for national legislation and regulations on private military and security companies.)

trend seen is that those few States that regulate this[102] usually prohibit active or former members of the police and the armed forces from taking part in private military and security companies' activities. However, the national legislation of the majority of States in the regions that were reviewed remains silent on this point, which is concerning.

33. The inconsistent regulation on permitted activities, the difference in the scope of prohibited activities, the lack of a clear dividing line between the functions of private military and security companies and law enforcement authorities, and the lack of rules on direct participation in hostilities, especially considering the growing role of private military and security companies in armed conflicts, post-conflict situations and low-intensity armed conflict situations, all increase the risks of ineffective control of these companies' activities and the potential for human rights abuses. This gives rise to challenges of enforcement, accountability and the availability of remedies.

E. Rules on acquisition of weapons

34. The research found rather scarce information in this field, which focused mainly on the varying means of legal acquisition of weapons. The Working Group notes that, in general, States allow the acquisition and possession of weapons for personnel of private military and security companies, though under very different conditions — even within the reviewed regions. For example, in some countries, personnel of private security companies are allowed to be armed and to possess weapons as determined by the relevant laws and regulations,[103] but elsewhere those personnel protecting people cannot be armed or perform guard services.[104] In some countries, special permits are required for the acquisition and possession of weapons and firearms[105] (and in certain countries the permit to carry firearms must indicate the activities for which the weapon or firearm will be used).[106] In others, permission to carry weapons is subject to having undergone training,[107] or to specific competence,[108] and there are other States again where only the acquisition and possession of special types of weapons and firearms is licensed or permitted or prohibited.[109] Examples were also found of countries in which private security service providers are not allowed to use firearms[110] or where the number of firearms or weapons is limited per company.[111] Some States also require specific measures for storing and depositing weapons.[112]

35. The Working Group found that most States had varying regulation regarding the legal acquisition and possession of weapons by private security companies. Only a few States addressed the issue of illegal acquisition and possession of weapons and had provisions concerning penalties. Those States[113] covered the subject of illegal acquisition and possession of weapons in their Criminal Codes[114] and Arms Export Control Acts.[115]

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[102] For example, the reviewed States of South America, Australia and Nauru, the majority of the francophone African States analysed, and France and Hungary.

[103] Burkina Faso, Côte d'Ivoire, France, Morocco and Tunisia.

[104] Chile, Mali and Peru.

[105] The Democratic Republic of the Congo, Malaysia, Singapore, Sri Lanka and Tunisia, and the States of South America.

[106] Côte d'Ivoire and Mali.

[107] Pakistan, the Philippines and Singapore.

[108] Sri Lanka.

[109] For example, in Azerbaijan, Cameroon, Côte d'Ivoire, the Democratic Republic of the Congo, Kazakhstan, Kyrgyzstan, Mali and the Republic of Moldova. In South American States, the general rule is that prohibited firearms cannot be used, or that the use of certain firearms is restricted to the police or the armed forces.

[110] Plurinational State of Bolivia.

[111] Chile, Colombia and Ecuador.

[112] Cameroon and Tunisia, and the States of South America.

[113] Australia, Tajikistan, Tunisia, the United Arab Emirates, the United Kingdom, the United States of America and Uzbekistan.

[114] Tajikistan and Uzbekistan.

[115] Australia, Tunisia, the United Kingdom and the United States of America.

36. The legislation reviewed depicts a variety of regulations regarding the legal acquisition and possession of weapons by private security companies, and the research shows that only very few States address the question of illegal acquisition and possession of weapons and its consequences. The Working Group notes that the wide access by personnel of private military and security companies to weapons and firearms, and the lack of standard methods and regulation of such companies and their personnel in relation to both the legal and the illegal acquisition of weapons and also to trafficking in firearms, may result in increased risks of human rights abuses and of lack of accountability for related offences.

F. Use of force and firearms

37. The regulation on the use of force varies among States. Some States are silent, for instance, on the use of firearms by private military and security providers, while a number of States regulate this. Whereas certain States request personnel of private military and security companies to meet specific regulations, developed exclusively for such companies,[116] others are satisfied with private security companies' staff meeting the rules governing the use of firearms by the population at large.[117]

38. The Working Group notes that regarding the question of allowing or prohibiting private military and security company personnel to use force and firearms, the reviewed countries' legislation typically follows two approaches. Some choose to allow private security company personnel to carry and use firearms under certain conditions,[118] while others opt for prohibiting the use of firearms[119] and provide a list of exception clauses with certain conditions.[120]

39. Most of the States reviewed in the Asian and Central and South American regions allow private security company personnel to carry and use firearms, but require specific licences, permits, authorizations or registration,[121] including information about the ownership of the weapon,[122] or define certain activities (such as duty[123] or travel[124]) and places (e.g. where security and guard services are provided by contract[125]), during which and where the firearm is allowed to be used. Some of these States specifically note that private military and security companies are prohibited from using undue force[126] or from using force when it is not strictly necessary.[127]

40. States that choose the prohibition as the general rule (and those few whose relevant national legislation was available for analysis) provide exceptions for the use of force and firearms by private military and security company staff, such as legitimate defence (e.g. Burkina Faso, Côte d'Ivoire, the Democratic Republic of the Congo, Kyrgyzstan, Morocco, the Republic of Moldova and the United States of America), necessity or exigency (Kyrgyzstan, the Republic of Moldova and the United States of America) or both (Hungary and Switzerland). Some of these States (Kyrgyzstan, the Republic of Moldova and the United States of America) provide legislation on the conditions under which private

[116] Burkina Faso, Côte d'Ivoire, the Democratic Republic of the Congo, Morocco and Uganda.

[117] For example, in Lesotho and Mauritius.

[118] As the Working Group saw from the global analysis, most reviewed States of the Latin American and Asian regions follow this path.

[119] The Gambia and Nigeria.

[120] For example, Burkina Faso, Côte d'Ivoire, the Democratic Republic of the Congo, the Gambia, Hungary, Kyrgyzstan, Morocco, Nigeria, the Republic of Moldova, Switzerland and the United States of America.

[121] See, for example, the legislation of Cuba, Malaysia, Singapore and Sri Lanka.

[122] For example, in El Salvador and Panama.

[123] In general, in all reviewed Central American countries.

[124] For example, in Panama.

[125] In the national legislation of South American States.

[126] Guatemala.

[127] Costa Rica.

military and security companies may exceptionally use force or firearms. Again, there is no uniformity on the regulation of this issue.

41. While some good examples exist (Azerbaijan, the Democratic Republic of the Congo, Kyrgyzstan, the Republic of Moldova and the United States of America), most of the reviewed States' national legislation has no specific rules on the use of high-calibre weapons or special devices and equipment that usually involve lethal force. Only very few States' national legislation offers details about mandatory training of private military and security company personnel on the use of force and firearms (the Philippines, Uganda and the United States of America, and the States of South America), and even less on the rules of engagement of private military and security company staff (China and the United States of America).

42. The Working Group notes with concern that in most of the cases analysed, the requirements for the use of firearms are generally very diverse and broadly defined, the content of the training for using firearms is vaguely described, regulations on the type and the calibre of firearms that are allowed to be used is usually missing, only very few concrete regulations were found on the use of force and firearms in the light of human rights standards, and only few rules were found to punish the firearms-related behaviour of private military and security company personnel more severely than that of ordinary citizens. Furthermore, although international human rights standards require that firearms be used proportionately, only in self-defence or defence of third persons and in a manner likely to decrease the risk of unnecessary harm, States, with some exceptions, do not provide sufficiently detailed regulations, requirements and procedures for compliance with, and accountability and remedies for violations of, human rights norms in connection with private military and security companies' possession and use of firearms.

G. Accountability

43. Most States have an established system for monitoring the activities of private military and security companies, which is generally administered by the agency that authorizes or licenses such companies and that is in charge of conducting regular inspections.[128] However, the monitoring systems are usually very broad, vary in form and content, or lack specifics on the content of monitoring activities and inspections.[129] Determining compliance with the standards of international human rights law and, where applicable, of international humanitarian law is normally not part of the monitoring bodies' mandate.

44. With very few exceptions, States have no detailed rules on reporting obligations as regards infractions or violations of domestic and/or human rights law committed by private military or security companies. Basically, States do not provide much detail about the nature of infractions or violations that are required to be reported on,[130] and/or they cover only violations of provisions regarding permissible activities, licensing, authorization, recruitment and other administrative processes, which result mostly in administrative sanctions applied by the authorizing or licensing agencies in the form of a warning, a fine, a temporary suspension of the company's activities, or withdrawal of authorization.[131] Among all the laws analysed, the Working Group found examples of provisions for reporting on or punishing offences or violations related to international human rights law or international humanitarian law only in Colombia, Guatemala, Peru, Switzerland and Tajikistan.

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[128] See, more particularly, the examples of the Plurinational State of Bolivia, Brazil, Chile, Côte d'Ivoire, Ecuador and Uruguay, and of the Province of Buenos Aires, as well as the examples of Kazakhstan, Kyrgyzstan, New Zealand, the Republic of Moldova and Tajikistan.

[129] As was noted by the Working Group, for example, in relation to the countries of the Commonwealth of Independent States.

[130] See, for example, Côte d'Ivoire, the Democratic Republic of the Congo and Senegal.

[131] See, for example, the States of francophone Africa, Costa Rica and Guatemala, the States of South America, and Nauru, New Zealand and Papua New Guinea.

45. It is also worrying that only in very few States does national legislation[15] expressly provide for penal and civil sanctions for violations committed by private military and security companies. In addition, the Working Group notes with particular concern the laws of India and Pakistan, which even include provisions for immunity for violations committed in "good faith" and exempt the persons involved from liability for indemnities. The global analysis shows that only very few States' national legislation (China, Pakistan, the Philippines and Switzerland) contain provisions on any forms of remedy for victims.

46. Without a proper and standardized monitoring mechanism for the activities of private military and security companies and an effective reporting, sanctioning and remedy system related to violations of the law, including human rights law, there is the risk that private military and security companies and their personnel in the countries of origin, registration and operation are not held accountable and liable for the human rights violations they commit during their operations.

47. The Working Group also notes that the absence of extraterritorial jurisdiction in the majority of jurisdictions studied is a significant impediment to accountability and to the availability of judicial remedy in the home State, considering the transnational nature of companies, particularly large companies, within the private military and security industry.

48. Additionally, with regard to territorial States, there is a lack of uniformity in national legislation on measures to ensure mutual legal assistance, which can also impede accountability and access to remedies. Many States, for example, will not extradite their own nationals. Some States will only extradite where the offence in the seeking State is also an offence in the sending State.

IV. Analysis

49. Considering the transnational nature of private security and military services, as well as the generally significant likelihood of use of force by personnel of such companies and of their involvement in hostilities, the Working Group stresses that the different approaches and regulatory gaps demonstrated in the present study create potential risks to human rights, including the right to life, the right to security, prohibition of arbitrary deprivation of liberty, prohibition of torture and of cruel, inhuman or degrading treatment or punishment, and the right of victims to effective remedies. Regulatory gaps in national legislation can also provide incentives for misconduct and human rights violations by personnel of private military and security companies, and may result in serious undermining of the rule of law and of the effective functioning of democratic State institutions responsible for ensuring public safety.

50. The results of the global study clearly indicate the challenges that the privatization of security poses to various States. Most of the regulations analysed do not address military-like activities of private military and security companies directly. This is despite the fact that private companies are normally involved in various other activities as well, besides security, such as military services, use of force, armed conflicts and other complex scenarios such as the so-called war on drugs, or they often participate in hostilities in other ways. If it does not cover all activities that are actually carried out by private military and security companies, national legislation may overlook certain private military and security company activities that include an increased risk of human rights violations undertaken by private actors. Further, the global study shows that only very few States' legislation deals with military and security services provided abroad or provides for extraterritorial jurisdiction.

51. It is therefore useful to define, in terms of classifications, the activities or services of a company. These classifications can be used to assess which activities increase the risk of human rights violations when undertaken by private actors. The fact that companies provide a variety of military and security services across borders, the general likelihood of private military and security company personnel's use of force and involvement in hostilities

[15] Such as in Burkina Faso, Côte d'Ivoire, Mali, Morocco and Tunisia.

outside of their States of registration and origin, the lack of extraterritorial application of the laws concerned, and the missing provisions on the export of security and military services, are significant impediments to accountability and to the availability of judicial remedies in the home State. The lack of a dedicated body responsible for the licensing, registration, vetting and monitoring of private military and security companies is also problematic.

52. The global study has shown that reference to international human rights and international humanitarian law standards in licensing and authorization procedures is not a common practice. Neither is the exclusion of applicants from consideration for licensing and authorization for private military and security services who have a record of human rights violations. The study also shows an absence of vetting mechanisms or training on international human rights law and international humanitarian law for the licensing of individuals. Taking into account the nature of private military and security company activities and their potential effect on their environment, it is highly risky not to have a standard system of licensing and authorization that refers to international human rights law and international humanitarian law.

53. The Working Group notes that, in general, States have detailed selection criteria and place emphasis on the necessity of providing training to staff. However, there is a lack of uniformity in the laws reviewed with regard to the selection requirements and to the content of the training of private military and security company personnel. The reviewed national legislation uses a diverse set of selection criteria and often focuses on form and procedural conditions rather than on content. Also, regulations on the training of private military and security company personnel vary significantly in terms of mandatory and optional trainings, their content, their duration, and references to international human rights law and international humanitarian law. Apart from a few exceptions, the laws reviewed do not include in their selection and/or training procedures any references to international human rights law or international humanitarian law, nor do they take into account any records or reports of human rights violations committed by private military or security company personnel in determining whether or not to select the individual concerned.

54. There were also weaknesses in the requirements regarding the training and qualifications of private security company personnel, especially when only a relatively low level of education is required. It is essential to have minimum standards in both respects, which ensure that personnel acquire basic knowledge and internalize human rights standards as the ethical and legal framework for private military and security activities. They must act responsibly in situations involving possible legitimate use of force, especially since all regulations permit the use of weapons.

55. The legislation reviewed varied among the States with regard to the legal acquisition and possession of weapons by private security companies and the research shows that only very few States address the question of the illegal acquisition and possession of weapons, and its consequences. The Working Group notes the high risk of human rights violations resulting from the wide access by personnel of private military and security companies to weapons and firearms. The lack of standard methods for private military and security companies, and the lack of regulation on such companies and their personnel, as regards not only the legal but also the illegal acquisition of weapons, and trafficking in firearms, may result in increased risks of human rights abuses and a lack of accountability for related offences.

56. While much of the States' legislation analysed has a system established for monitoring the activities of private military and security companies, the monitoring systems are usually very broad, vary in form and content, or completely lack specific rules on the content of monitoring activities and inspections. The study shows that in general, national legislation does not explicitly make compliance with the standards of international human rights law and international humanitarian law the subject of monitoring bodies. The Working Group also notes that the vast majority of States have no detailed legislation on reporting obligations for infractions or violations of domestic and/or human rights law committed by private military and security companies. The Working Group found provisions for reporting on or punishing offences or violations related to international human rights law or international humanitarian law in very few countries. Also, very few

States' national legislation expressly provides for penal and civil sanctions for violations committed by private military and security companies, and even fewer States' national legislation contains provisions on any forms of remedy for victims. Without a proper and standardized monitoring and accountability mechanism for the activities of private military and security companies and an effective oversight, reporting, sanctioning and remedy system related to violations of the law, including human rights law, there is the risk that private military and security companies and their personnel in the countries of origin, registration and operation are not held accountable and liable for the human rights violations they commit during their operations.

57. The Working Group found great diversity and ambiguity in the description of permitted and prohibited activities, a lack of a clear dividing line between the functions of private military and security companies and law enforcement authorities, and a lack of rules prohibiting direct participation in hostilities in armed conflict — an especially significant concern considering the growing role of private military and security companies in armed conflicts, post-conflict situations and low-intensity armed conflict situations. This gives rise to challenges of enforcement, accountability and the availability of remedies to victims of violations.

58. The private military and security industry often operates in complex environments characterized by weakened rule of law. The Working Group believes that accountability under such conditions requires the increased exercise of extraterritorial and universal jurisdiction.

59. The Working Group is also of the view that regulation of non-State actors, such as private security providers, requires a multidimensional approach that includes improved international norms and standards, effective national regulation and enforcement, and industry-led efforts to improve compliance with human rights standards. The Working Group has been involved in various efforts at each of these levels, and in the present report focuses on domestic legislation. This global study of national legislation shows that, despite commendable efforts, norms and standards at the national level leave many gaps in the regulation of private military and security companies and in regard to their accountability in the face of human rights violations.

60. Given the regulatory gaps that have been identified, the Working Group is pleased at the development of voluntary initiatives such as the Montreux Document Forum and the International Code of Conduct for Private Security Service Providers, which have clearly led to improved standards across the industry. It is also encouraging to see that many companies have signed up to the International Code of Conduct for Private Security Service Providers' Association since its establishment and that the Montreux Document is also garnering a growing number of signatories. These are important complementary initiatives for the strengthening of regulation on private military and security companies.

61. However, an assessment of self-regulatory and voluntary initiatives such as those mentioned, as well as this global study on national legislation, show that self-regulation and voluntary initiatives cannot in themselves ensure comprehensive accountability for human rights violations and provide effective remedies for victims. Only clear legal norms backed by State enforcement can do this. The Working Group supports the incorporation of these norms into an international legally binding instrument rather than relying on self-regulation and voluntary initiatives that are non-binding.

V. Conclusions and recommendations

62. **The Working Group's global study indicates that States' approach to regulation of an increasingly transnational industry is patchy and inconsistent. The ever-increasing privatization of security and military functions and the general growth of the private military and security industry across international boundaries raise serious questions about the legitimacy of the private use of force and the capacity of States to control their territory effectively and to provide strong accountability mechanisms and effective remedies to victims of human rights violations committed by private military and security companies. The Working Group is concerned that**

weak national legislation and enforcement mechanisms, along with ad hoc and fragmented industry self-regulation, cannot address human rights concerns effectively.

63. Licensing, registration, vetting of personnel, the scope of permissible and prohibited activities, the use of force, the use of firearms and other weapons, accountability and remedies for violations — especially in the light of the transnational nature and activities of private military and security companies — are all areas in which national legislation is wanting.

64. Even though a private military or security company may be registered in State A, may recruit personnel from States B, C and D, and may enter into a contract with State E (or a private entity in State E) to perform services in State F, few countries have national legislation that covers the activities of private military and security companies abroad. Considering the transnational nature of private security and military services, insufficient national regulation seriously weakens the rule of law. Where borders between countries are porous, it is necessary to fill the gaps and promote international, regional and subregional agreements for the regulation of private military and security companies, to effectively protect the rule of law, human rights, and, especially in conjunction with the use of private military and security companies in extractive industries, the exercise of the right of peoples to self-determination. The Working Group encourages States to promote discussion of the role of private security companies in the context of regional and international security, and therefore incorporate such discussions into the agendas of intergovernmental, regional and subregional organizations.

65. In order to ensure the restriction of the use of force to that which is necessary, mandated and proportional, in accordance with international law, regulation is necessary to outline clear conditions regarding the use of force, especially in relation to the right to self-defence. There should also be some consideration given to the distinction between offensive and defensive use of force. It should be noted that while the distinction might be workable in non-armed-conflict contexts governed by international human rights law, it does not work in armed conflict, where defending a legitimate military objective (i.e. being a voluntary human shield) amounts to direct participation in hostilities and renders private military and security company personnel targetable under international humanitarian law.

66. The Working Group welcomes the strengthening of national legislation to fill the regulatory gaps that have been identified in its global study. The Working Group also acknowledges the valuable impact of the Montreux Document and the International Code of Conduct for Private Security Service Providers in improving regulatory standards across the private military and security industry. However, both national legislation and voluntary initiatives have limitations in ensuring accountability and access to effective remedies when human rights violations are committed by private military and security company personnel, particularly in transborder contexts.

67. The Working Group thus reiterates its call for an international legally binding instrument to ensure consistent regulation worldwide and adequate protection of the human rights of all affected by the activities of private military and security companies. An international legally binding instrument can provide a standard regulatory framework and single dedicated body on issues related to the activities of private military and security companies, including accountability and the availability of effective remedies for victims.

68. A body established by an international legally binding instrument could be responsible for the licensing, regulation and monitoring of private military and security companies and could incorporate clear human rights and humanitarian law standards into contracting, licensing and monitoring procedures. Such procedures could also be the basis for due diligence, to introduce human rights-based vetting mechanisms as well as mandatory legal training on international human rights and international humanitarian law standards as a criterion for obtaining a licence to

operate and for subsequent licence renewals. This instrument could go beyond mere compliance with selection-related formalities, instilling respect for rights and establishing the responsibility to impose concrete sanctions for infractions. Selection procedures and background checks must be improved, with training requirements that make specific reference to international human rights and international humanitarian law.

69. **A distinction must be drawn between the activities of private military and security companies and State authorities. An international legally binding instrument could describe the legitimate role and functions of private military and security companies, and can provide for the prohibition of the involvement of private military and security company personnel in inherently governmental functions such as combat or military activities.**

70. **States should also consider and implement regulations on the rules and methods of acquiring, exporting, importing, possessing and using weapons and to ensure that private military and security company personnel worldwide are also held accountable for illegal acquisition of weapons and illicit trafficking in arms.**

71. **An international legally binding instrument could also strengthen provisions on the accountability of private military and security companies and their personnel to the government of their country of origin, registration or operation, and establish, for this purpose, standardized and effective accountability mechanisms to ensure the enforceability of regimes regulating the activities of private military and security companies. Such mechanisms would establish penal accountability and civil liability of both individuals and corporate actors for human rights violations, as well as a framework for oversight, and for reparation and remedy for victims.**

72. **As further guidance to States, the Working Group prepared a concept note for consideration during the fourth, fifth and sixth sessions of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies. The concept note incorporates critical elements to inform potential discussions on a possible international legally binding instrument on private military and security companies. These elements were identified as a result of expert consultations, meetings and discussions undertaken by the Working Group with States, civil society organizations and various stakeholders. The concept note is accessible on the website of the Working Group[133] and the open-ended intergovernmental working group on private military and security companies.**

73. **Regarding the various conventions on mercenaries, the Working Group calls upon States parties to ratify and incorporate the United Nations and African Union mercenaries conventions' standards into their national legislation.**

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[133] See www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/IssuesFocus.aspx.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to the Central African Republic*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people's to self-determination on its mission to the Central African Republic. The visit, from 10 to 19 October 2016, was made at the invitation of the Government. In accordance with its mandate, the Working Group studied the impact of mercenarism and foreign fighters on human rights, including the right of peoples to self-determination, in the context of the armed conflicts that took place in 2003 and 2013. The Working Group also assessed the situation with regard to private security companies in the country.

During the past conflicts, and to date, armed groups composed of mercenaries and foreign fighters have committed scores of human rights violations against the civilian population. A large part of the population today continue to live in fear of attacks and killings by armed groups, despite the presence of international peacekeepers in the country.

The activities of mercenaries and foreign fighters continue to be a significant challenge to the stability of the Central African Republic. There is thus a critical need to adopt measures to combat the activities of those actors, including eliminating impunity and reinforcing efforts to facilitate effectively peacebuilding, reconciliation and development in the country.

* The present report was submitted after the deadline in order to reflect recent developments.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to the Central African Republic**

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** Circulated in the language of submission and in French only.

I. Introduction

1. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited the Central African Republic from 10 to 19 October 2016 at the invitation of the Government. The delegation comprised two members of the Working Group, Anton Katz and Patricia Arias. They were accompanied by staff of the Office of the United Nations High Commissioner for Human Rights and United Nations interpreters.

2. In accordance with Commission on Human Rights resolution 2005/2 and Human Rights Council resolution 33/4, the Working Group is mandated to study and identify sources and causes, manifestations and trends with regard to mercenaries and mercenary-related activities and their impact on human rights, particularly the right to self-determination. The mandate also covers the monitoring of the activities of private military and security companies and their effects on human rights.

3. The Working Group thanks the Government of the Central African Republic for the visit invitation. It also thanks the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), particularly colleagues at the Human Rights Division, for their valuable support and assistance with the visit.

4. Since 2014, the Working Group has been exploring the linkages between the phenomenon of foreign fighters and mercenaries and their impact on human rights, particularly the right to self-determination. The visit to the Central African Republic was an opportunity to assess the activities of mercenaries and foreign fighters involved in the past conflicts.

5. During the visit, the Working Group held meetings in Bangui and Bria. It was able to meet with State authorities, including the Minister for Foreign Affairs and his staff, the Minister for Internal Affairs, Public Security and Territory and his staff, the Special Advisor in charge of Disarmament, Demobilization, Reintegration and Repatriation and his colleagues, the Chief of Office for the Ministry of Justice, representatives from the Ministry of Social Affairs and National Reconciliation, and the senior public prosecutors in Bangui and Bria.

6. The delegation was also able to meet with the Special Representative of the Secretary-General of MINUSCA, the two Deputy Special Representatives of the Secretary-General, and various colleagues from different departments of the office in Bangui and Bria. The delegation held meetings with internally displaced persons in the M'Poko camp near the airport in Bangui. It also visited the Bimbo prison for women and met with civil society organizations in Bangui. In Bria, the delegation met with local authorities, representatives of civil society organizations, victims of human rights violations and representatives of different ex-Séléka groups. The delegation was unable to meet with anti-balaka representatives. The Working Group is particularly grateful for the opportunity to have met with victims of human rights violations who bravely shared their testimonies with the delegation.

II. Definition and scope

7. A mercenary is defined in international law as someone who is specially recruited locally or abroad in order to fight in an armed conflict and is motivated essentially to take part in hostilities by a desire for private gain, or is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party. A mercenary is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict, is not a member of the armed forces of a party to the conflict and has

not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.[1]

8. There is no international legal definition for foreign fighters or a specific legal regime governing them. Foreign fighters are generally understood to be individuals who leave their country of origin or habitual residence to engage in violence as part of an insurgency or non-State armed group in an armed conflict.

9. The right to self-determination, in its contemporary manifestation, encompasses political struggles for greater democracy and human rights. This right is referred to in Article 1 (2) of the Charter of the United Nations as a fundamental principle necessary for the achievement of universal peace. The Human Rights Committee recognizes the right to self-determination as an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.[2] That right is also broadly understood as the right of peoples to determine their own political and economic system, including by participatory political processes.[3]

10. In the present report, a private military and/or security company is defined as a corporate entity that provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities.

III. Historical context

11. The Central African Republic is a landlocked country with a population of around 4.9 million people. It is one of the poorest countries in the world, with over 60 per cent of its population living under the national poverty line.[4] In recent decades, the country has experienced cycles of violent conflicts involving mercenaries and foreign fighters and various armed groups. Today, the country continues to face tremendous challenges, both in the civil, political and humanitarian contexts.

12. Political instability has been a common feature of the history of the Central African Republic since it gained independence. In 1960, David Dacko was the first president of the country, which gained independence from France in the same year. Five years later, he was removed from power through a coup d'état led by Serge-Bedel Bokassa, who dissolved the parliament, suspended the constitution and declared himself emperor in 1976. In 1979, Bokassa was overthrown by Dacko, who reassumed the presidency. In 1981, another coup d'état resulted in Dacko's removal by General André Kolingba, the Chief of Staff of the army, who stayed in power until 1985. In 1993, elections were held in the country and Ange-Félix Patassé became the president. After decades of political instability, mostly instigated by military regimes, civilian rule was established for almost a decade under Patassé.

13. In 2002, a failed coup against Patassé was made by Francois Bozizé, the Chief of Staff of the army. After fleeing to Chad, Bozizé began recruiting more local fighters to support him. In 2003, Bozizé and his armed groups seized Bangui by force and declared himself president. During that period of fighting, the civilian population was subject to gross human rights violations committed by both sides supporting Bozizé and Patassé.

14. In 2005 and 2011, presidential elections were held, which Bozizé won. However, discontent and threats from various armed groups against Bozizé were common. In 2004, fighting erupted between government forces and multiple rebel groups, which led to a

[1] See International Convention against the Recruitment, Use, Financing and Training of Mercenaries, art. 1. The definition is also provided in art. 1 of the Organization of African Unity Convention for the Elimination of Mercenarism in Africa (1977). The definition of mercenary also includes the following criteria: someone who is promised material compensation by or on behalf of a party to the conflict.

[2] See Human Rights Committee general comment No. 12 (1984) on the right to self-determination.

[3] See art. 1 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights.

[4] See United Nations Development Programme, *Human Development Report 2016* (New York, 2016). Available from http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf.

number of peace agreements aimed at ending the conflict. However, in 2012, several rebel factions began to form a coalition with the intent of overthrowing Bozizé. Those groups became known as "Séléka", meaning "alliance." The members of Séléka were predominantly Muslims and included individuals from Chad and the Sudan.

15. In 2012, Séléka was mainly composed of elements from the groups *Convention patriotique du salut du Kodro*, Convention of Patriots for Justice and Peace and the *Union des forces démocratiques pour le rassemblement* that had launched a violent attack in the northern parts of the country. In March 2013, Séléka seized the capital, causing President Bozizé to flee the country. Michel Djotodia, the head of the *Union des forces démocratiques pour le rassemblement* faction, appointed himself President. In September 2013, Djotodia dissolved Séléka but the groups continued to operate throughout the country, expanding their control in various territories. Some reportedly joined the local armed forces. Because it was formally dissolved by Djotodia, the armed groups connected to Séléka are often referred to as ex- or former Séléka. Séléka committed widespread human rights violations, particularly against Christian communities.

16. In retaliation to the gross human rights violations inflicted by Séléka, various local communities began to form self-defence groups, calling themselves "anti-balaka" or "anti-machete". Those groups, mostly comprising Christians and animists, committed scores of human rights violations, particularly against Muslims. Soldiers from the armed forces reportedly supported the anti-balaka groups. Reports have documented grave human rights violations committed by all sides to the conflict, including widespread killings, sexual and gender-based violence, torture, rape and other criminal activities.[5] There was also widespread looting and pillaging, and many properties were destroyed.

17. By the end of 2013, the conflict had escalated to unprecedented levels of violence and thousands of civilians had been killed. Early in January 2014, Michel Djotodia announced his resignation as President amid international outcry over the violence and human rights abuses in the country. On 23 January 2014, the National Transitional Council elected Catherine Samba-Panza as interim President. The sectarian violence, however, continued unabated and, in April 2014, MINUSCA was established to focus mainly on the protection of civilians, the facilitation of humanitarian access and the monitoring, investigation and reporting of human rights abuses. Support to alleviate the conflict was also provided by forces from the African Union,[6] the European Union and Operation Sangaris.

18. The deployment of international forces led to the gradual regaining of stability in the country. On 23 July 2014, an agreement to end the hostilities was signed by representatives of the various ex-Séléka armed groups and the anti-balaka.[7] By the end of the conflict, the armed groups had dispersed to various parts of the country.

19. In 2015, a constitutional referendum and the first round of presidential elections were held. The elections were marked by violence instigated by armed groups. A second round of voting was held in February 2016, which Faustin-Archange Touadéra won. President Touadéra outlined his priorities to include security reform, a focus on achieving peace, good governance and the proper management of public resources.

20. Although there was now some semblance of stability in the Central African Republic today, armed groups continued to have control over various parts of the country, with Séléka concentrated in the northern areas and the anti-balaka continuing to have strongholds in Bangui and the surrounding region. Intercommunal violence continued to be a problem, and the local population was still in danger of daily attacks and killings. The

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[5] See www.ohchr.org/Documents/Countries/CF/Mapping2003-2015/2017CAR_Mapping_Report_EN.pdf.

[6] As part of the *Mission internationale de soutien à la Centrafrique sous conduit africaine* (MISCA).

[7] Signatories to the agreement included representatives from former Séléka groups, namely, the *Front populaire pour la renaissance de la Centrafrique*, the *Front démocratique du peuple centrafricain*, *Révolution et justice*, the *Mouvement de libération centrafricaine pour la justice*, the *Union des forces républicaines*, the *Union des forces républiques fondamentales* and anti-balaka representatives.

remoteness of some areas under the control of armed groups made it extremely difficult for those territories to be secured.

IV. Progress and development

21. Notwithstanding the turbulent history of violence in the country, there have been various developments and positive initiatives implemented by the Government, with support and assistance from various agencies, including MINUSCA. The elections that concluded in February 2016 were carried out peacefully, despite years of instability.

22. In May 2015, the Bangui Forum brought together 700 participants from diverse groups, including representatives of the transitional Government, national political parties, civil society, religious groups and former Séléka and anti-balaka groups. The adoption at the Forum of the Republican Pact for Peace, National Reconciliation and Reconstruction affirmed, among other things, the conditions required to hold free and transparent elections. It prioritized the need for constitutional protections of human rights and fundamental freedoms and called for the establishment of a national human rights institution. Other priorities included the need for a transitional justice mechanism, including a commission on truth, justice, reparation and reconciliation. Also signed at the Forum was an agreement on disarmament, demobilization, reintegration and repatriation, which included the requirement that armed groups commit to ceasing the recruitment of children and to releasing all child soldiers associated with them. A seminar on the fight against impunity was held in Bangui in 2015 with a focus on the critical need to bring perpetrators of human rights violations to justice. The seminar stressed the importance of combating impunity in order to ensure genuine reconciliation for the country.

23. In June 2015, the transitional parliament promulgated a law on the establishment of the Special Criminal Court to investigate and prosecute grave human rights violations committed since 2003. The Court would be composed of international and national magistrates and staff. After its visit, the Working Group received the positive news that a special prosecutor and magistrates for the Court had been appointed and sworn in,[8] signalling several important steps towards its operation. Furthermore, the Working Group commends the recent establishment of a National Commission on Human Rights and Fundamental Freedoms. Government representatives from the Ministry of Justice have reported that collaboration with the International Criminal Court is ongoing in an attempt to bring to justice prominent perpetrators of human rights violations in the past conflicts.

24. The Working Group hails the positive work by religious leaders to build relationships and promote reconciliation among Christian and Muslim communities. The delegation was able to observe other good practices carried out by faith-based groups in the country, particularly in the rehabilitation of young people who had engaged in the past conflicts. In November 2015, a visit from Pope Francis resulted in a decrease of tensions and violence in Bangui and throughout the country. The potential for faith-based initiatives to strengthen reconciliation efforts and build social cohesion could be further enforced by local initiatives, including the work of the peace committees and programmes currently being implemented in various communities to reduce violence.

V. International and national legal framework

25. Mercenaries and foreign fighters are governed by applicable international law, and foreign fighters are obliged to respect applicable rules of international humanitarian law during armed conflicts. In non-international armed conflicts, non-State armed groups, including foreign fighters, do not enjoy combatant immunity and may be prosecuted under domestic law for mere participation in hostilities.

[8] Toussaint Mukimapa was appointed as the prosecutor and is from the Democratic Republic of the Congo.

26. The Central African Republic has ratified several international conventions, including the 1949 Geneva Convention and its Additional Protocol of 1977, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol. At the regional level, it has ratified the African Charter on Human and Peoples' Rights and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. In 2001, it ratified the Rome Statute of the International Criminal Court, thus providing a mandate for investigations into crimes of genocide, crimes against humanity and war crimes.

27. However, the Working Group notes that the Central African Republic has not ratified the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries or the 1977 Convention for the Elimination of Mercenarism in Africa, which aims at prohibiting the recruitment, use, financing and training of mercenaries and the elimination of mercenarism. It has also yet to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

28. Regarding national laws, various constitutions have been enacted in the Central African Republic, most recently on 14 December 2015. All of the constitutions have contained provisions relating to the guarantee of fundamental human rights, including the right to life and physical integrity and the right to be free from rape, torture, cruel, inhuman and degrading treatment and arbitrary detention, and the right to property. The Working Group was pleased to note that article 19 of the 2015 Constitution stipulates that "in the event of a coup d'état, aggression by a third State or mercenaries, every member of a constitutional body has the right and the duty to resort to all means to restore constitutional legitimacy, including recourse to applicable agreements of military cooperation or defence".

29. The 2010 Penal Code defines international crimes, including genocide and crimes against humanity, including the use of murder, mass summary executions, rape and sexual violence as part of a widespread or systematic attack against the civilian population. It also penalizes war crimes, such as torture and cruel, inhuman and degrading treatment.

VI. Key concerns

A. Mercenaries and foreign-armed actors

30. The involvement of mercenaries and foreign fighters in the 2003 and 2013 conflicts and their continuing presence has been a serious hindrance to national stability and efforts to move the country forward. Lack of robust management of the borders between neighbouring countries has facilitated the influx of arms and weapons and foreign-armed actors, including mercenaries. Some of those countries are also embroiled in armed conflict, making the situation in the region volatile.

31. According to information received by the Working Group, François Bozizé relied heavily on additional fighters to depose Angé-Félix Patassé in the 2003 conflict. He hired mercenaries from Chad, with the promise of compensation. Bozizé's fighters also included former army soldiers and young people. Approximately 500 or 600 men formed that faction and were referred to as "liberators".

32. President Patassé reportedly had the support of around 1,500 members of the national army, as well as around 100 Libyan soldiers and 500 rebels fighting with Abdoulaye Miskine, the Chadian leader of the armed group known as the *Front démocratique du people centrafricain*.[9] Patassé also reportedly hired a French mercenary

[9] See International Federation for Human Rights Legal Action Group on the situation in the Central African Republic before the International Criminal Court, available from

and hundreds of Congolese mercenaries under the command of Jean Pierre Bemba of the *Mouvement de libération du Congo*.

33. Reliable estimates of the number of mercenaries and foreign fighters are difficult to obtain. An international commission of inquiry led by the United Nations estimated that, at the start of the 2012-2013 conflict, there had been around 1,600 fighters with Séléka and, by the time Djotodia dissolved the group in September 2013, there had been around 3,500 armed fighters operating under the Séléka banner.[10] Nationals of Chad and the Sudan were reportedly members of Séléka, along with fighters from Cameroon, the Democratic Republic of the Congo and the Niger. The Working Group found it difficult to obtain information on mercenaries and foreign fighters who had joined the anti-balaka group, as it mostly comprised members of the local population, although that group was also responsible for mass human rights violations.

34. During the visit, the delegation was informed that potentially more than 500 mercenaries and foreign fighters had remained in the Central African Republic, operating within various armed groups. Some interlocutors stated that mercenaries were still present in PK5, a predominantly Muslim neighbourhood in Bangui that had witnessed much violence between rival armed groups. The Working Group did not, however, receive concrete data to verify the number of mercenaries that remained in the country.

35. Other factions comprising foreign armed actors included the loosely organized groups of criminals or bandits known as *zaraguina*, who presented a significant threat to civilians, particularly in the northern region. Those groups had killed civilians and taken hostages for ransom, and their attacks had caused the displacement of multiple communities. In the absence of national security forces in some areas, they had acted with impunity, often targeting the Peuhl or Fulani pastoralists and violently suppressing the transhumance movement on the routes from Cameroon. Those groups also involved criminals from neighbouring countries.

36. Sudanese poachers had also committed human rights violations and had caused tension with inhabitants in the northern part of the country, mainly in the Vakaga region. Heavily armed poachers had reportedly joined Séléka during the 2013 conflict and had collaborated with various armed groups in numerous illegal activities.

Lord's Resistance Army

37. In 2008, the Lord's Resistance Army (LRA) began to infiltrate the remote south-eastern parts of the Central African Republic, after they had been driven out of Uganda. They occupied mostly the Haut-Mbomou region bordering the Democratic Republic of the Congo and the Sudan. The presence of the group had worsened the security situation for civilians in that part of the country. There had been upsurges of violence committed by LRA since the 2013 conflict owing to a lack of security and protection in those remote areas.

38. The Working Group met with victims of human rights violations committed by LRA and was informed that the group had included individuals from Uganda, the Central African Republic, Chad, the Democratic Republic of the Congo, the Niger and the Sudan. Although the delegation was informed of an estimate of at least 150 LRA fighters left in the country, it was difficult to ascertain the real number given the remoteness of the territory in which those fighters operated. The presence in the region of the African Union-led regional taskforce supported by the United States of America military that operated jointly specifically to track down and provide armed resistance to LRA elements had helped to diminish the number of LRA fighters. However, serious violations against the civilian population, including kidnapping, enslaving of women and children, pillaging and killings continued to be carried out by the group.

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www.fidh.org/IMG/pdf/CPIaffBemba502ang2008.pdf.

[10] See preliminary report of the International Commission of Inquiry on the Central African Republic, S/2014/373, annex., sect. III.

39. Recently, the Ugandan army had begun to withdraw their troops from the African Union taskforce, following a decision by the United States to do the same. That raised serious concerns about security for civilian populations in the south-eastern part of the country, given the recent incidents of violence at the hands of LRA.

Transhumance movement

40. Transhumance herders and pastoralists move through the Central African Republic with their livestock on a seasonal basis. Many pastoralists come from neighbouring countries, like Chad, to take advantage of better grazing fields and water supply in the Central African Republic. Many pastoralists were members of the Peuhl or Fulani people. Pastoralists involved in transhumance increasingly faced regular threats and attacks from armed groups. They had been targets of kidnapping, theft, harassment and killings by armed groups or bandits. As a result, some pastoralists had armed themselves in retaliation, resulting in violent clashes around the country. Some had had to relocate to find safer routes for their movement.

41. The past conflicts had led to an increase in intercommunal violence and overall tension owing to the presence of armed groups, and had affected relations between local farmers and pastoralists. There had been regular reports of attacks against Muslim Peuhls, including by anti-balaka groups, that had caused many pastoralists to flee to safety in other locations. Raids had been carried out by armed groups[11] and Chadian armed elements crossing the border; other situations had involved armed Peuhl or Fulani attacking local villages. Some pastoralists had hired armed groups or rebels to protect themselves and their livestock.

II. Motivational factors

42. The primary motivation of mercenaries participating in hostilities is financial gain. Foreign fighters are motivated by a range of factors, notably ideology, but they can also be motivated by financial or material gain. The Working Group thus considers foreign fighters as a "mercenary-related activity". In the Central African Republic, mercenaries and foreign fighters had engaged in the past conflicts, largely out of a desire for financial gain or personal enrichment. Other factors, including religion and territorial control through criminal activities, had also attracted foreign-armed elements, who had taken advantage of the security vacuum in the country.

Financial incentives

43. During the 2003 conflict, Bozizé had recruited Chadian mercenaries and fighters to depose Patassé, with the promise of financial compensation. According to some sources, some mercenaries did not receive the payment they had been promised and became disgruntled, then remained in the country, where some had resorted to criminal activities for financial gain. Those activities had included theft, pillaging and illegal taxation imposed on the local population. A significant amount of income for armed groups had reportedly been earned from the extortion of road users. Patassé had also offered financial compensation in return for the services of Congolese mercenaries under Jean-Pierre Bemba.[12]

44. The exploitation and trafficking of rich natural resources in the country had also attracted mercenaries and foreign fighters. Natural resources included diamonds, timber, gold, uranium and oil. The lack of a strong national security force and the remoteness of areas where armed groups operated had led to a flourishing of exploitation by armed groups. Armed groups had acquired control over diamond mines and had benefited from the trafficking of diamonds, despite the embargo on the diamond trade. The profits from these illicit operations continued to be incentives for armed groups and had contributed to

[11] The Working Group was made aware of a particular armed group, *Révolution et justice*, involved in such raiding activities.

[12] See report of the Legal Action Group, footnote 9 above, p. 17.

the strengthening of the control those actors had in some of the most vulnerable parts of the country. Mercenaries and foreign fighters had a direct interest in prolonging the conflict in order to have unfettered access to natural resources and benefit from lucrative activities that they could carry out with impunity.

45. Bandits and local criminal gangs had taken advantage of the prevalent insecurity to exploit and enrich themselves through pillaging, looting, theft and illegal taxations. The Working Group was informed of an ex-Séléka group that controlled the trade in diamonds and gold by operating in mines and in mining villages. Illicit taxation had also been imposed on agricultural products including coffee. LRA had exploited the rich natural resources in the eastern part of the country, including gold, wood and diamonds. The delegation was told that, in some cases, LRA had collaborated closely with ex-Séléka groups in the exploitation of natural resources and other illegal operations.

Religious element

46. The population of the Central African Republic is around 80 per cent Christian and 15 per cent Muslims. During the 2013 conflict, human rights violations were committed against both Christian and Muslim communities. Although it had been political at the outset, the conflict became religious in nature when Séléka groups targeted Christian communities and anti-balaka groups retaliated with deadly attacks against the Muslim population. Those violent clashes caused widespread human rights violations and worsened the humanitarian crisis in the country. Both Christians and Muslims fled from their homes, which were in territories controlled by the Séléka and anti-balaka groups. According to reports, the religious nature of the conflict attracted foreign fighters from Chad and the Sudan who wanted to offer support to their fellow Muslims within the Séléka. Many churches were burned by the Séléka, and anti-balaka groups destroyed mosques. Many Muslim communities were forced to flee to neighbouring countries as refugees, and some towns where Christians and Muslims had coexisted peacefully were no longer home to Muslim families.

47. At a meeting in Bria, ex-Séléka representatives told the Working Group about their frustrations; according to them, Muslims had for years been marginalized and discriminated against by the Christian majority in the Central African Republic. Some expressed support for the idea of partitioning the country into a Muslim region and a Christian region. The Working Group was aware that ex-Séléka factions were divided in their grievances, and that the information it had received at that meeting did not reflect the demands of the 14 ex-Séléka factions said to be in the country.

48. Many interlocutors told the Working Group that, before the 2013 conflict, Christians and Muslims had lived side by side without serious problems, and many intermarried. The conflict itself had been marked by incidents where Séléka groups attacked and killed Muslim civilians. Some told the Working Group that anti-balaka groups comprised Muslim members, and that religion had been exploited and used by many to further divide the population into warring factions.

49. Various interlocutors referred to the threat that Boko Haram posed to the Central African Republic. The activities of Boko Haram had affected neighbouring countries and could potentially spill over because of the fragile security situation in the country and the religious aspect of the conflict.

Territorial control

50. The fragile state of the country and the opportunities that presented for criminal activities to flourish had attracted foreign fighters to exploit the situation in the Central African Republic. Armed foreigners continued to enter the country to conduct illegal operations, including trafficking of arms and weapons from neighbouring countries and as far away as Libya. This was a major concern and challenge to the disarmament efforts being carried out by the Government and its partners. The proliferation of armed groups and their potential to exert power and control over various territories in the country continued to attract mercenaries and foreign fighters to the country.

C. Human rights violations

51. The past conflicts in the Central African Republic have resulted in one of the worst humanitarian crisis in the world. Many interlocutors used the word "trauma" to describe the experience of the Central African Republic. Others referred to the country as a State that had yet to be born, a reference to the multiple armed conflicts that have plagued the country since it gained independence. Because of its history of violence, some people living in the Central African Republic have only known armed conflict and war. Victims of human rights violations bravely shared their testimonies, including accounts not only of rape and torture, but also of being made to witness their family, friends and neighbours being killed, attacked or tortured by various perpetrators.

52. The perpetrators of human rights violations in the recent conflict included not only mercenaries and foreign fighters, but also local members of Séléka or anti-balaka groups and government security forces. Other perpetrators reportedly included former army elements, gendarmerie, delinquents, local bandits and criminal gangs. The delegation also received information relating to government authorities within the Central Office to Suppress Banditry who also committed human rights violations.

53. The lack of robust national security forces in the towns and regions outside Bangui, and the proliferation of arms and weapons in the country, had made the civilian population easy prey for armed groups. The influx of foreign fighters and mercenaries had further compounded the volatile security situation in the country. In addition, poverty continued to be a daily challenge, and more than half of the population was in dire need of humanitarian assistance.

54. During the period from 1 June 2015 to 31 March 2016, MINUSCA had documented 1,301 incidents of human rights violations and abuses, an increase of 526 violations since the previous reporting period of 15 September 2014 to 31 May 2015. They were predominantly committed by anti-balaka and ex-Séléka groups and their different factions, including the *Unité pour la paix en Centrafrique*, the *Front populaire pour la renaissance de la Centrafrique*, the *Mouvement patriotique pour la Centrafrique*, the *Front démocratique du peuple centrafricain*,[13] Revolution and Justice, and Return, Reclamation and Rehabilitation[14] (under Colonel Sidiki), most of which were affiliated with the Fulani or Peuhl people, and the LRA.[15]

55. In total, 2,473 people had been victims of violations and abuses, an increase of 1,688 since the previous reporting period. Of those, 261 had been women and 203 children. At least 338 civilians had been killed during the period, mainly in armed confrontations between the anti-balaka and ex-Séléka groups, but also in targeted killings committed during the outburst of sectarian violence in September and October 2015 in Bangui among Muslims and Christians, supported by ex-Séléka and anti-balaka armed groups, respectively.[16] In June 2016, the security situation once more deteriorated, after MINUSCA soldiers and armed groups clashed in the PK5 enclave in Bangui. A Senegalese peacekeeper was killed in late June and, in July, clashes between various ex-Séléka actors caused further civilian casualties and displacement.[17]

56. The Working Group was informed that the 2013 conflict had led to at least 5,000 deaths, an estimated 380,000 internally displaced persons and 450,000 refugees fleeing to neighbouring countries. Many people had been left homeless after their homes were destroyed. Those that bore the worst brunt of the conflict included the most vulnerable in society, namely women, children, the elderly and persons with disabilities.

[13] Ibid.

[14] The Return, Reclamation and Rehabilitation group formed after the 2013 conflict and has caused widespread human rights violations.

[15] See www.ohchr.org/Documents/Countries/CF/CAR1June2015To31Mar2016_en.pdf.

[16] Ibid.

[17] See A/HRC/33/63, para. 34.

57. During the conflicts, children increasingly had become victims of armed groups. Between 6,000 to 10,000 children had been connected to armed groups, whether forcibly recruited as child soldiers or used for sexual slavery and other purposes.[18] Both Anti-balaka and Séléka groups had recruited child soldiers. LRA had routinely abducted children to be used as child soldiers, as well as porters, informants, cooks and sex slaves. Sexual violence against young girls and boys had also been common. Interlocutors reported that some children who had fought with LRA later joined armed rebellions in neighbouring countries, including the Democratic Republic of the Congo. Also during the conflicts, many children had their education interrupted, and schools had been destroyed or used as bases for armed groups.

58. During the visit, the delegation held tense discussions with various interlocutors, who referred to the sexual abuse of children by international peacekeepers deployed to the country. Discussions held at the M'poko camp for internally displaced persons were tense as interlocutors assumed the delegation had been part of the local MINUSCA mission. The tension was eased when it was made clear that the Working Group's visit focused on the problems related to mercenarism and foreign fighters. Interlocutors recounted their frustration with the international community, not only in the context of the sexual abuse allegations against peacekeepers but also because armed groups continued to operate with impunity in the country. Meetings with civil society were also difficult owing to discussions around the reported sexual abuse by forces belonging to the United Nations and the Sangaris troops. The Working Group notes that this is an ongoing serious concern that needs to be addressed effectively by the United Nations and concerned Member States. It reiterates the call of United Nations High Commissioner for Human Rights for the States concerned to investigate thoroughly those cases.[19]

59. During its visit to the M'poko camp, the delegation saw first-hand the dire living conditions of around 20,000 internally displaced persons, some of whom had fled their homes after they were destroyed and now lived in the camp's severe conditions. They told of foreigners and mercenaries who had come into their towns to loot, pillage and kill members of their communities. Some had been told that they could return to their homes but felt that the pervasive presence of armed groups still threatened their safe return. Others described the extreme difficulty in going back to homes that had been destroyed as there were no resources to build shelters and, in some instances, there were still dead bodies in the local wells and water supplies, making it impossible to live in such conditions.

60. The Working Group received repeated reports of armed groups that had executed or tortured with impunity persons they had accused of witchcraft. The authorities informed the delegation that they had had to put some such accused persons in detention to protect them from attacks in their communities. Both anti-balaka and ex-Séléka groups had targeted persons accused of witchcraft. Accusations concerning witchcraft appeared to be both arbitrary and random, and particularly aimed at elderly women and men as well as children, resulting in executions, rape, torture, detention, abduction and cases where people had been buried alive. Children had become some of the most vulnerable victims in that context. The Working Group was informed of an estimated 500 cases related to witchcraft allegations.

61. The plight of persons living with disabilities continued to be a major concern, particularly in the context of forced displacement and vulnerability to attacks by armed groups. Persons with disabilities also had particular challenges in gaining access to food supplies and basic services relating to hygiene and sanitation, especially when they were living in the dire conditions of displacement camps. During the conflicts, many people had fled for their lives and left behind family members with disabilities. As with many other victims of the conflicts who needed humanitarian assistance, more resources were needed to provide for persons living with disabilities.

62. Attacks on humanitarian actors had also become common, thereby significantly reducing the critical aid and help being delivered to the civilian population. After the

[18] See UNICEF press statement, "Hundreds of children released by armed groups in Central African Republic", 14 May 2015. Available from www.unicef.org/media/media_81890.html.

[19] See www.un.org/apps/news/story.asp?NewsID=53583#.WVYyP4iGOM0.

Working Group's visit, an outbreak of violence early in 2017 directly affected humanitarian workers across the country. As a result, four major humanitarian organizations had suspended their activities in areas where the lives of such workers had been significantly threatened. Other organizations had had to reduce their presence in areas where life-saving activities were provided to the civilian population.[20] This had set back the humanitarian efforts to help the local population, with real costs to human lives.

Sexual and gender-based violence

63. One of the most disturbing trends of human rights violations in the past conflicts and currently has been the widespread use of sexual and gender against the civilian population. While the Working Group was informed by the Ministry of Social Affairs that around 6,000 women had been victims of sexual violence in the recent conflict, it was estimated in a recent report that the number of women and girl victims was around 27,977, and men and boy 1,824 victims.[21] In total, 44 per cent of rape cases had involved gang rapes committed in front of family members. Mercenaries and foreign fighters had regularly instigated sexual violence in both in the 2003 and 2013 conflicts.

64. The Working Group met with victims of LRA who had been subjected to sexual slavery, rape and other forms of sexual violence. Victims referred to the LRA as "tongo tongo" which means "those who come early", a reference to the early morning attacks commonly employed by the group against local communities. Victims of rape often became pregnant and gave birth in the worst of conditions. In some cases, women survivors of LRA returned to their village and suffered harsh treatment, including stigmatization and abandonment by spouses and other relatives. The women had to raise their children on their own without support from their family and communities. The lack of psychosocial support offered to scores of victims of sexual and gender-based violence, combined with the accompanying stigma, had made recovery for survivors extremely difficult, in those cases where it was even possible.

Right to self-determination

65. The Working Group reiterates the threat that mercenaries and foreign fighters present to the territorial integrity of the Central African Republic. States that are threatened by the activities of such foreign actors must be vigilant in guarding their territories and must also rely on the effective collaboration of other States whose citizens are engaged in those activities. Mercenaries and foreign fighters are able to influence domestic insurgencies in ways that may ultimately undermine the right of self-determination. They are likely to reframe and radicalize the overall aims of an insurgency and contribute to its fragmentation and duration.[22] That, in turn, may complicate mediation and negotiations to end the conflict. Those foreign armed actors often bring in new, radical and unlawful tactics that encourage greater violence towards the civilian population.[23]

66. In the Central African Republic, the ongoing presence of mercenaries, foreign fighters and multiple armed groups is a serious barrier to the exercise of the right of peoples to self-determination. Their destabilizing effects have hindered the local population from effectively building a peaceful, developed and democratic society. The Working Group has, over time, emphasized that mercenarism and mercenary-related activities pose grave threats to the right of peoples to self-determination and to the peace and security of developing

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[20] See http://reliefweb.int/report/central-african-republic/humanitarian-access-endangered-central-african-republic.

[21] See www.ohchr.org/Documents/Countries/CF/Mapping2003-2015/2017CAR_Mapping_Report_EN.pdf.

[22] See Kristin M. Bakke, "Help Wanted? The Mixed Record of Foreign Fighters in Domestic Insurgencies", in *International Security*, vol. 38, No. 4, 2014; and Ben Rich and Dara Conduit, "The Impact of Jihadist Foreign Fighters on Indigenous Secular-Nationalist Causes: Contrasting Chechnya and Syria", in *Studies in Conflict & Terrorism*, vol. 38, No. 2, 2014.

[23] See Jeni Mitchell, "The Contradictory Effects of Ideology on Jihadist War Fighting: The Bosnian Precedent", in *Studies in Conflict & Terrorism*, vol. 31, No. 9, 2015.

countries, particularly in Africa and in States that have been weakened by political instability and armed conflict.

VII. Ongoing challenges to national stability

67. In the light of the various efforts by the Government and the international community to rebuild the Central African Republic, the Working Group has identified the below key concerns as threats to national stability.

Continued presence of armed groups and lack of civilian protection

68. Any effort at peacebuilding and national reconciliation cannot be effective as long as the presence and threats of armed groups continue unabated. Even with the presence of peacekeeping troops and reinforcement and training given to national security forces, armed groups have established bases in various parts of the country that are outside government and MINUSCA control. Border management is extremely weak — and non-existent in some places — and the influx of fighters from neighbouring countries is difficult to control. There is no national identification register to keep track of people moving between borders. The regular resurgence of violence in various parts of the country is evidence of the lack of security measures in place to suppress violence and deadly attacks. The problem of impunity and weak judicial mechanisms also contribute to the proliferation of activities and violence by armed groups.

69. During the Working Group's visit, attacks took place on 12 and 15 October, resulting in over 40 deaths and the displacement of over 5,000 individuals, respectively. Some neighbourhoods, such as PK5 in Bangui, continued to be hot spots for violent clashes. During the visit, ex-Séléka factions gathered in Bria in a general meeting, but the relationships among those groups deteriorated into deadly clashes among members. The main groups affected in the infighting were the *Unité pour la paix en Centrafrique*, under Ali Darassa, which was dominated by the Fulani ethnic group, and the *Front populaire pour la renaissance de la Centrafrique*, under Noureddine Adam, dominated by Muslims of the Gula and Runga communities. The religious divide was no longer the dominant basis for fighting among armed groups, as Muslim ex-Séléka were fighting one another on ethnic lines and for territorial control.

70. Many civilian deaths and thousands of cases of displacement had also threatened the peace process and the success of disarmament, demobilization, reintegration and repatriation process. Despite a ceasefire agreement signed in Rome in June 2017 between the Government and the armed groups, fighting ensued and caused around 100 deaths a few days after the agreement was signed. Between March and May 2017, more than 121 civilians and 6 peacekeepers were killed by ex-Séléka and anti-balaka groups.[24] Fighting continued into the months and weeks prior to the writing of the present report in Bria, Kaga-Bandoro, Bangassou and Zemio.

71. The Working Group remained concerned about the inability of the weak national security forces to deal with the pervasive violence and threats of armed groups without continuous international support. There was real concern that another armed conflict could develop if the proliferation of armed groups remained uncontrolled. The departure of the Ugandan and United States forces from the country had left the south-eastern region vulnerable to LRA attacks. Furthermore, the volatile conflicts in neighbouring countries had serious implications on the safety and security of the civilian population in the Central African Republic.

[24] See OHCHR press release dated 16 May 2017, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21621&LangID=E.

Impunity

72. The need to combat impunity effectively should be prioritized in order to achieve lasting peace and reconciliation. The Working Group observed nearly no prosecutions brought against perpetrators of human rights violations in the past conflicts, despite the ongoing work of the International Criminal Court and the establishment of the Special Criminal Court. It was clear that there was still a long way to go to bring perpetrators to justice and provide effective remedies for victims.

73. The Working Group noted the severe challenge to access to justice for victims in the lack of judicial infrastructure, lack of qualified members of the judiciary and of judicial independence, and the existing threats of reprisals against members of the judiciary, victims and witnesses. Corrupt and untrained investigators was also a serious problem. The need to ensure robust protection for witnesses and victims who wished to participate in judicial proceedings against perpetrators of human rights violations was a critical issue. Victims of human rights violations should also have access to effective remedy and reparations.

74. Interlocutors informed the Working Group of the frustration of seeing members of armed groups move freely around the various towns without fear of being arrested or detained. In neighbourhoods such as PK5, violent clashes leading to civilian casualties were common but arrests were rarely made. The Working Group was not aware of any mercenaries or foreign fighters being arrested during its visit. Penitentiary facilities were not secured, and around 700 inmates had escaped from Ngaragba prison in Bangui. Incidents of violent clashes in PK5 were also common, but the national security force could not enter and apprehend perpetrators of human rights violations in that neighbourhood owing to heavily armed elements inside the area. Anti-balaka militias were also present around Bangui neighbourhoods and had attacked Muslim quarters, including in PK5, resulting in multiple deaths.

75. Various interlocutors felt that not enough efforts were being made to strengthen the national security forces to deal with armed groups and that MINUSCA needed to act urgently in incidents where civilian lives were at risk. Many felt that there had been too many incidents in which civilians had been killed within the proximity of MINUSCA forces and that protection was not sufficiently provided.

76. However, the Working Group noted the case of Jean Pierre Bemba, who had been convicted of war crimes by the International Criminal Court. Bemba had been the head of Congolese mercenaries who had assisted Bozizé in the 2003 conflict. The arrest and trial of Dominic Ongwen by the Court for war crimes was also an important development. The Working Group strongly emphasizes the crucial need to bring to justice the perpetrators of the mass human rights violations that have been committed in the past conflicts, and that every effort must be made to stop the regular eruptions of violence in the country. In that sense, it also recognizes the need for effective collaboration between the Central African Republic and its neighbouring countries to stem and combat the influx of foreign fighter and mercenaries and to facilitate the exchange of information and evidence for the purpose of prosecuting perpetrators. A strong framework for regional cooperation may serve as a useful tool for that type of important exchange to ensure that mercenaries and foreign fighters operating in the region are held to account. Existing frameworks, including that of the African Union, may provide an important platform for that type of cooperation.

Challenges to peace and reconciliation initiatives

77. The disarmament, demobilization, reintegration and repatriation process and the security sector reform were important for setting the conditions to achieve peace and reconciliation. Positive aspects of the process included the implementation of community violence reduction programmes, by which ineligible combatants must return to their communities and participate in community development projects or income-generating activities. The outbreak of clashes between ex-Séléka groups after a ceasefire agreement had been signed in Rome was an indicator that the process was not being taken seriously. In its discussion with the armed groups, the Working Group noted that there was no real

incentive for the groups to lay down its arms unless their demands were met. Some of the demands included a more equal and balanced representation between Muslim and Christian members in the Government.

78. During the visit, a consultation by the Committee on Disarmament, Demobilization, Reintegration and Repatriation on 12 October 2016, which involved armed groups, faced challenges. Furthermore, the disarmament, demobilization, reintegration and repatriation process, although an important initiative, must ensure that perpetrators of human rights violations are brought to justice and do not be unjustly profit from the process. The issue of the repatriation part of the process, which required the effective cooperation of the State of origin of a mercenary and foreign fighter, needed to ensure that returned fighters who have committed human rights violations are not granted immunity.

79. A critical issue that the Government and all stakeholders in the peacebuilding process need to address is the "identity" of the Central African Republican. The constant use of "foreigners" in reference to Muslims, Fulanis and ex-Séléka was worrying for the Working Group, particularly as it was a narrative used — mostly by anti-balaka and their supporters — to alienate and label those in the Muslim communities. Hence, a person who may be born and raised in Central African Republic, but had origins in Chad or the Sudan and was Muslim, could be categorized as a "foreigner". Fulanis, who are nomadic and people of Arabic descent in northern parts of the country, were often labelled as "foreigners" by virtue of their Muslim background. The porous borders and lack of border control have made the Central African Republic a multi-ethnic and diverse State as people move in and out of the country. Some of those people on the move can reside in the Central African Republic for many years, including over several generations. However, because of their Muslim origin, they can be labelled "foreigners". The Central African Republic does not currently have an adequate system where people can register as nationals of the country. This further creates complexities in the discussion on who is defined as a "national". The narrative against Muslims as foreigners is worrying, not only because of its divisive effect but also because it can fuel further sectarian violence and antagonism based on identity and constructed purely to benefit groups such as anti-balaka or those belonging to the majority Christian community. In that regard, reconciliation work needs to include the important efforts carried out by, for example, religious leaders, which focus on building unity among the Christian and Muslim communities and avoid any initiatives that may use the identity issue as a tool for further violence and conflict. Any attempt to resolve the question of who is a foreigner and who is a citizen of the country needs to address the unique mix of different ethnicities, religion and inhabitants within the country.

80. The role of civil society is also crucial and should be incorporated in all stages of the reconciliation process. The participation of vulnerable groups in the reconciliation efforts is critical.

81. The Working Group noted with concern that the local media had further fuelled the growing sectarian divide between Muslim and Christian communities. The irresponsibility of the local media in fomenting hatred among the population was a cause of grave concern and needed to be dealt with promptly and effectively to avoid further sectarian divide and violence.

Increasing hostility towards MINUSCA and international actors

82. The Working Group is concerned with the apparent increasing hostility of the civilian population towards MINUSCA and notes that this can have a negative impact on peace efforts on the ground. There was a prevalent perception among the local population that protection provided by MINUSCA had not been sufficient or timely. Many allegations were aimed at the perceived lack of intervention by MINUSCA troops even when physically present during violent clashes and killings. The Working Group is concerned that this hostility may increase and cause further attacks against MINUSCA, international staff and humanitarian actors. The allegations of sexual abuses by international forces had also added to the hostility. The local media also had repeated programmes calling for MINUSCA to withdraw from the country.

83. Shortly after the visit, violent demonstrations took place in Bangui, in which participants called for MINUSCA to leave the country, reportedly resulting in the deaths of 4 persons and injuries to 14, including 5 members of the United Nations force. In a series of attack by anti-balaka groups in May 2017, the MINUSCA base in Bangassou was targeted and six peacekeepers were killed.

VIII. Private security companies

84. The Working Group was informed of private security companies that had been employed to guard and protect natural resources, some of which were foreign-owned, including by China. One such company, Fit Protection, had signed an agreement with ex-Séléka groups for a large amount of money and had recruited former combatants as personnel. The manager of the private company was a former government Minister. The Working Group is concerned at the recruitment and ties between foreign and former combatants with private security companies. Although it was told of existing legislation on private security companies, the Working Group remains concerned at the lack of strong and effective regulations to address possible violations of human rights committed by those companies. The Group recommends that a strong accountability framework be established to safeguard against human rights violations committed by private military and security company personnel and that provisions be made for mechanisms to provide remedy and reparations to victims. That framework should also ensure that mercenaries are not recruited by private military and security companies.

IX. Conclusions and recommendations

85. **The Working Group is not convinced that the threats of mercenarism and foreign fighters to the Central African Republic have diminished. In fact, there is real fear and concern that, with the current insecurity in the country, the influx of such armed actors will continue to threaten national stability. The Working Group strongly senses that the possibility of another armed conflict, if foreign armed actors and local armed groups are not effectively dismantled and suppressed. This is a very difficult challenge to a fragile State that is struggling to recover from a history of armed conflict. However, with the assistance of regional States and mechanisms, as well as the international community, it is possible to improve drastically the situation in the country. The support of donors to provide funds and resources to restore peace and security in the country is essential, as outlined in the Brussels Conference of donors, held in November 2016. It is therefore important to keep the issue of the Central African Republic at the forefront of the concerns of the international community. To neglect to do so may run the risk of prolonging one of the worst humanitarian crisis of our time.**

86. **Indeed, addressing the mercenary and foreign fighter phenomenon is a complex task. An important step forward is the ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which provides a useful framework for the prosecution of offenders and the establishment of channels of cooperation between States. Furthermore, it makes participation in mercenary activities an offence of mandatory universal jurisdiction, which means that an offender must, unless extradited, be tried by any State in which he or she is found. The ratification of the Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict is also an important step.**

87. **The protection of civilians remains a top priority, and urgent reforms to the security sector are critical. This is necessary to ensure a stable environment, particularly in the light of the deterioration of the security situation in recent months. In that respect, the Working Group encourages MINUSCA and the national security forces to respond more proactively to threats against civilians, including in sensitive areas, such as camps for internally displaced persons.**

88. **The perpetrators of human rights violations in the past conflicts and in the current crisis must be held to account in order to support genuine reconciliation and peace efforts. Efforts to strengthen the judicial system and to set up remedy and reparation mechanisms are crucial. The protection of members of the judiciary, those within the justice system and witnesses and victims is also fundamental to combating impunity. To that end, the Working Group encourages the Central African Republic to adopt and implement urgently a law to protect witnesses and victims.**

89. **The ongoing investigations of the International Criminal Court should be supported with the necessary information from the justice departments, judiciary and MINUSCA to support the prosecution of perpetrators of human rights violations in the past conflicts.**

90. **The operationalization of the Special Criminal Court and the adoption of the disarmament, demobilization, reintegration and repatriation plan should be prioritized. With regard to the repatriation of foreign combatants under the plan, the Working Group recommends closer cooperation with countries of origin to ensure that the repatriation segment is effectively implemented. The Government should strengthen its efforts with respect to the Special Criminal Court by selecting and appointing judges and highly qualified legal personnel who will be able to conduct investigations into serious violations of human rights.**

91. **The Working Group noted the need to strengthen in a transparent manner the policy of the disarmament, demobilization, reintegration and repatriation process. It encourages the Government to ensure that those who committed human rights violations are prosecuted for their actions and do not unjustly benefit from the process.**

92. **The Working Group recommends that the Government strengthen its cooperation with civil society and involve them in the investigations and peacebuilding and reconciliation processes in a transparent manner. Those processes must allow the participation of the population, particularly vulnerable groups, including women, children, persons with disabilities and the elderly.**

93. **Establishing stronger regional cooperation with neighbouring countries is essential. The Working Group emphasizes that mercenarism and foreign fighters are transboundary phenomena that call for the close cooperation of other countries, especially neighbouring countries. Strong and robust border management needs to be implemented by the Central African Republic and its neighbours. The need for stronger co-operation with neighbouring countries is of utmost urgency to achieve greater stability in the region.**

94. **The Government needs to establish non-judicial transitional justice mechanisms through consultations and awareness campaigns regarding the objectives and functions of such mechanisms. Documentation and records of human rights violations are necessary for record-keeping. This will assist in the efforts to secure and preserve documents related to human rights and international humanitarian law violations, which can be used for the prosecution of perpetrators and for mapping the way forward in policies relating to truth, justice and reparation.**

95. **In the light of the concerning role of local media in fuelling sectarian tension and violence, strong efforts are necessary to combat hate speech and intolerance within local media outlets. Promoting human rights standards by building the capacity of local media can also assist in countering hate speeches. MINUSCA can play an important role in that regard.**

96. **As the mineral wealth of the Central African Republic, such as diamonds, gold, uranium and oil, continue to attract foreign elements in order to exploit those resources illegally, it is essential that the Government establish a system for natural resource management.**

97. **The participation of all sectors of society are indispensable for the building and reconciliation processes and to achieve a lasting peace. Religious leaders and faith-based initiatives need to be supported and strengthened by national authorities and**

international partners given the positive work those bodies have carried out in rehabilitating not only children and adults who had been engaged in combat, but also the victims of human rights violations. Religious leaders have been valuable in restoring dialogue among the local communities. The local peace committees that are set up under the Ministry of Social Welfare and National Reconciliation are also important for building dialogue and social cohesion among the local population.

98. **Representatives of the executive, legislative and judicial arms of the State need to be inclusive of minority groups, including those within the Muslim communities. An inclusive government can pave the way towards national reconciliation and prevent violence between Muslim and Christian factions.**

99. **The national authorities should prioritizes raising awareness to promote respect for human rights, provide reparations to victims of human rights violations and focus on the right to development which are essential to ensuring peace and reconciliation.**

100. **Local education curricula should include training on human rights, including on respect for diversity and the conditions needed to ensure reconciliation and peace. Those elements should also be incorporated into the training of government officials and the civil service, national security forces, local media, civil society organizations and local communities.**